



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2004

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2004-3328

Dear Mr. McGillivray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200005.

The Texas Workers' Compensation Commission (the "commission") received a request for documents from the case file concerning the commission's investigation of the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that section 552.101 excepts the submitted information from disclosure. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.092(a) of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances.¹ "Investigative file" is defined as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." Labor Code § 402.092(d). Section 414.005 of the Labor

¹ The four limited circumstances are:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause; or
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

Code provides that the commission's compliance and practices division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers' Compensation Act (the "Act") and commission administrative rules. *See* Labor Code § 414.005; *see also id.* §§ 414.001, .002.

You inform us that the information at issue relates to possible violations of the Act, commission rules, and the Texas Penal Code. You state that the commission maintains investigation files pursuant to section 414.005 of the Labor Code. You state that the submitted information is contained in such an investigation file, and is confidential under section 402.092. You further state that subsections 402.092 (e) and (f) of the Labor Code are not applicable to the investigation file at issue.²

Based on our review of the submitted information and your representations, we conclude that the information at issue consists of investigative materials that are subject to section 402.092 of the Labor Code. A release in response to the present request would not constitute a disclosure under one of the four permissible circumstances enumerated in section 402.092(a) of the Labor Code. Thus, the investigative file information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

You also request that this office issue a previous determination to categorically encompass any commission investigation files. We decline to issue such a determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

² These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

- (1) the complaint was groundless or made in bad faith; or
- (2) the complaint lacks any basis in fact or evidence; or
- (3) the complaint is frivolous; or
- (4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 200005

Enc. Submitted documents

c: Mr. Paul Lewis
P.O. Box 361
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(w/o enclosures)